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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

(निर्वाचन विभाग)

अधिसूचना

जयपुर, मई 28, 2025

संख्या एफ. 9(1)(53)/निर्वा./2024/2305:- भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/राजस्थान-वि0स0/(2/2024)/2025 दिनांक 23 मई, 2025 मय माननीय राजस्थान उच्च न्यायालय, जोधपुर के निर्णय दिनांक 10 अक्टूबर, 2024 जिसमें (176) नाथद्वारा, राजसमन्द विधानसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 2/2024 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

नवीन महाजन,

प्रमुख शासन सचिव।

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड़, नई दिल्ली-110001

तारीख :- 23 मई, 2025

02 **ज्येष्ठ** 1947 **(शक)**

अधिसूचना

सं0 82/राजस्थान-वि0स0/(2/2024)/2025: लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 2/2024 श्री जितेन्द्र कुमार बनाम श्री विश्वराज सिंह व अन्य में राजस्थान उच्च न्यायालय, जोधपुर के तारीख 10 अक्टूबर, 2024 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

अश्वनी कुमार मोहल,

सचिव,

भारत निर्वाचन आयोग।

SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.
Dated:- 23rd May, 2025
02 Jyeshtha, 1947 (Saka)

NOTIFICATION

No. 82/RJ-LA/(2/2024)/2025:- In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes judgment dated 10.10.2024 of the Hon'ble High Court of Rajasthan, Jodhpur in Election Petition No. 2 of 2024 Sh. Jitendra Kumar Vs. Sh. Vishvaraj Singh and ors.

By order,

ASHWANI KUMAR MOHAL,
SECRETARY,
ELECTION COMMISSION OF INDIA.

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Election Petition No. 2/2024

Jitendra Kumar S/o Late Shri Nanuram Ji Khatik, Aged About 47 Years, (Assembly Candidate 2023 Assembly Area 176) R/o Kumariya Kheda, Post Namana, Tehsil Nathdwara, Dist. Rajsamand (Raj.)

----Petitioner

Versus

1. Shri Vishvaraj Singh S/o Shri Mahendra Singh Ji Mewad, (Assembly Candidate 2023 Assembly Area 176) / Mla Nathdwara, R/o Samor Bagh, Udaipur, Tehsil Girwa, Dist. Udaipur (Raj.)
2. Smt. Mahma Kumari W/o Shri Vishawraj Singh Mewad, D/ o Mahendra Singh Ji Mewad (Assembly Candidate 2023 Assembly Area 176) , R/o Samor Bagh, Udaipur Tehsil Girwa, Dist. Udaipur (Raj.) 313001
3. Shri C.p. Joshi S/o Bhudev Prasad Joshi, (Assembly Candidate 2023 Assembly Area 176) R/o House No. 42, Bagarwada, Nathdwara, Tehsil Nathdwara, Dist. Rajsamand (Raj.)
4. Shri Babulal Salvi S/o Shri Bhura Salvi, (Assembly Candidate 2023 Assembly Area 176) R/o 214, Salvi Mohalla, Village Emdi, Tehsil And Dist. Rajsamand (Raj.)
5. Shri Moti Singh Chadana S/o Shri Uday Singh Chadana, (Assembly Candidate 2023 Assembly Constituency 176) R/o Ver Ki Bhagal, Gaon, Tehsil Khamnor, Dist. Rajsamand (Raj.)
6. Dist. Election Officer/ Dist. Collector, Rajsamand, Tehsil And Dist. Rajsamand (Raj.)

7. Returning Officer/ Sub Divisional Officer, Assembly Election, Nathdwara (176) - 2023,Tehsil Nathdwara, Dist. Rajsamand (Raj.)
8. Chief Electoral Officer, Election Commission, Rajasthan State, Jaipur (Raj.)

----Respondents

For Petitioner (s) : Mr. Jitendra Kumar Khatik,
petitioner, present-in-person

For Respondent (s) : Mr. Rajesh Joshi , Sr. Advocate
assisted by Ms. Kamini Joshi
Mr. Vinit Sanadhya with
Mr.Priyanshu Gopa

HON'BLE MS. JUSTICE REKHA BORANA

Order

Reportable

10/10/2024

1. The matter has come upon an application under Order VII Rule 11 of Code of Civil Procedure, 1908 (CPC) as preferred on behalf of respondent No.1 for dismissal of the election petition.
2. The present election petition has been preferred by the petitioner with the following prayers:

> "(i) That the nominations of respondent numbers 1 and 3 to 5 may kindly be rejected and the Assembly elections 2023 may kindly be declared void and respondent numbers 1 and 3 to 5 may be declared ineligible to contest elections for the next 6 years.
>
> (ii) That the result dated 3.12.2023 and nomination of respondent number 1 may kindly be canceled and or election may be declared void and the petitioner may be declared elected for the post of MLA of Assembly Constituency 176 (Nathdwara) and declared elected for a period of 5 years from the date of declaration.
>
> (iii) Any other order or direction, which this Hon'ble Court considers just and proper in the interest of justice. Cost of the election petition may kindly be granted."

3. The ground raised in the election petition is that respondents No.1 & 3 to 5 had filed false affidavits in support of their nomination papers and further, concealed material information in the said affidavits which is in contravention to the specific guidelines as issued by the Hon'ble Apex Court in the case of **Public Interest Foundation & Ors. Vs. Union of India & Anr.; 2019 (3) SCC 244 and further in Union of India Vs. Association of Democratic Reforms and Anr.; (2002) 5 SCC 294.**

4. An application under Order VII Rule 11, CPC has been preferred on behalf of respondent No.1 with a specific averment that the election petition neither reflect any fact or ground in terms of Sections 100 & 101 of the Representation of the

People Act, 1951 (hereinafter referred to as 'the Act of 1951') nor does it reflect any cause of action in compliance of Section 83 of the Act of 1951. It has been averred that the complete plaint/petition talks of wrong and incorrect particulars filed by respondent No. 2 in her affidavit, who did not even contest the election. There is not a single averment of any wrong affidavit been filed by respondent No.1, who was there turned candidate hence, the averments made against respondent No.2 would be of no avail so far as respondent No.1 is concerned.

5. It has further been averred that even if the pleadings as made in the election petition are read as it is, the same does not reflect any cause of action so as to maintain the present election petition. The only averment made in the election petition is that there was a discrepancy in the particulars qua the income as furnished by respondent No.1 and respondent No.2 who are the husband and wife.
6. Learned Senior Counsel appearing for respondent No.1 submits that even if the particulars as furnished, are considered on the face of it, there is no discrepancy, whatsoever, in both the affidavits, as alleged by the petitioner. Further, even if any incorrect statement has been made in the affidavit of respondent No.2, she not being a candidate, any particulars furnished by her, cannot even be considered in the present election petition.
7. Raising the second ground, learned Senior Counsel submitted that the present election petition deserves to be dismissed even on the count of mis-joinder of parties.

   As per Section 82 of the Act of 1951, if a petitioner prays for declaration that he himself or any other candidate be elected, all the contesting candidates are to be impleaded as parties to the election petition and where no such declaration is prayed for, the returned candidate is to be impleaded. In the present matter, respondent No.2 was neither a contesting candidate nor a returned candidate. Therefore, she ought not to have been impleaded in the present petition and the present petition deserves to be dismissed on the sole ground of mis-joinder of parties.
8. Learned Senior Counsel lastly submitted that firstly, there was no discrepancy in the affidavits of respondents No.1 & 2 and secondly, even if, it is assumed that there was any, as per Section 36(4) of the Act of 1951, no nomination paper can be rejected on ground of any defect which is not of substantial character.
9. In support of his submissions, learned counsel relied upon the judgments in the cases of :
   (i) ***Rehan Ahmed (D) thr. L.R.s Vs. Akhtar Un Nisa (D) thr. L.R.s; AIR 2024 SC 2541,***
   (ii) ***Kanimozhi Karunanidhi Vs. A. Santhana Kumar & Ors.; AIR 2023 SC 2366 and***
   (iii) ***Mahaveer Prasad Pareek Vs. Rampratap Kaslaniya and Ors.; 2023 (4) RLW 3158 (Raj.).***
10. Per contra, the petitioner, present-in-person, submitted that the election of a returned candidate can be declared to be void, if the Court reaches to a conclusion that result of the election of a returned candidate has been materially affected by

the improper acceptance of any nomination. He submitted that as per Section 33A(2) of the Act of 1951, a candidate is under an obligation to submit an affidavit sworn by him in a prescribed form, verifying the information as specified in sub-section (1) of Section 33A, along with his nomination paper.

Relying upon the above provisions, the petitioner submitted that the affidavits as furnished by respondents No.1 & 2 were totally false and incorrect as the particulars given in the said affidavits clearly varied whereas the same could not have varied, respondents No.1 & 2 being the husband and wife.

11. So far as respondents No.3 to 5 are concerned, it has been pointed out that they submitted certain wrong information in their affidavits. The petitioner therefore, while relying upon the Hon'ble Apex Court judgment in the case of **Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Others; AIR 2014 SC 2069** submitted that the nomination forms of respondents No.1 and 3 to 5 had been wrongly accepted by the Returning Officer and on account of the said improper acceptance of the nomination forms, the election of the returned candidate had been materially affected.

12. Heard the petitioner and learned counsels for the parties.

13. Before adjudicating the issue whether the present election petition discloses any cause of action for declaration of the election result to be void and whether there is any discrepancy in the affidavits as filed by respondents No.1 & 2 so as to constitute any incorrect or false affidavit, a perusal of the pleadings as made in the plaint/petition would be relevant.

14. Para No.7 of the petition refers to respondent No.1, the returned candidate, wherein it has been pleaded as under :

> "7. That BJP candidate Vishwaraj Singh Mewar has filled in Part No.3 of the nomination paper as 54 years of age, whereas his age has been stated as 56 years in the voter list along with his nomination papers. Also, in serial number 4 of the affidavit submitted by him PAN card number, and Sr. No.1 his personal name and the permanent account number of Hindu Undivided Family is AAEHU8629Z at serial number, in serial number 2, the PAN card number of his wife Mahima Kumari Singh, in serial number 3, the permanent account number of Hindu Undivided Family is number AAEHU8629Z are shown. Whereas in the affidavit of his wife respondent No. 2, the said column has been marked as NIL. Where as respondent No.1 and 2 are husband and wife. Both of them purchased the stamp on the same day on 03/11/2023 and got it notarized at the same place, on the same day, and the affidavits of both are different, that is, they are false, the facts have been concealed. The respondent No.1 in his affidavit has stated the gross value of his property as Rs.50,72,499/- and that of his W/o as Rs.22,99,000/- and in the column of Hindu divided family, he has stated the value of articles and jewelery as Rs.24,98,500/- have shown. Whereas in the affidavit submitted by his wife, she has shown her husband Rs.75,70,999/- of her

husband and NIL amount in the column of undivided Hindu family, that is, she has hidden the facts by filing a false affidavit. Besides this, many facts have been concealed by them."

15. A bare perusal of the above pleadings reflects that the only alleged discrepancy pointed out in para 7 of the petition is that there is a variation in the income and the value of articles and jewellery as furnished in the affidavits of respondents No.1 & 2. The particulars as furnished by respondent No.1 in his affidavit (Annexure-2) is as under :

8	आस्तियो और दायित्वों (अपतट आस्तियों सहित) के रूपयों के ब्योरें-						
	विवरण	स्वयं	पति या पत्नी	हिंदु अविभक्त कुटुंब	आश्रित-1	आश्रित-2	आश्रित -3
क.	जंगम आस्तियां	75,70,999 /	22,99,000 /	शून्य	1,20,000 /	56,000 /	लागू नहीं

The gross value of the assets and liabilities qua himself (respondent No.1) has been reflected to be Rs.75,70,999/-, of his wife to be Rs.22,99,000/-, of his Hindu undivided family to be 'NIL', of dependent No.1 (daughter) to be Rs.1,20,000/- and of dependent No.2 (son) to be Rs.56,000/-.

16. The particulars as furnished by respondent No. 2 in her affidavit (Annexure-3) is as under: -

8	आस्तियो और दायित्वों (अपतट आस्तियों सहित) के रूपयों के ब्योरें-						
	विवरण	स्वयं	पति या पत्नी	हिंदु अविभक्त कुटुंब	आश्रित-1	आश्रित-2	आश्रित -3
क.	जंगम आस्तियां	22,99,000 /	75,70,999 /	शून्य	1,20,000 /	56,000 /	लागू नहीं

As per her affidavit, valuation of the assets and liabilities qua herself has been reflected to be Rs.22,99,000/-, her husband to be Rs.75,70,999/-, qua Hindu undivided family to be NIL, dependent No.1 to be Rs.1,20,000/- and dependent No.2 to be Rs.56,000/-.

17. A bare comparison of the above particulars, on the face of it, makes it clear that there is no discrepancy whatsoever in both of them.

Respondent No.1, i.e., the husband, has reflected the valuation of his assets and liabilities to be Rs.75,70,999/- and respondent No.2, i.e., the wife, has also reflected the said valuation qua her husband to be Rs. 75,70,999/-. Respondent No.1 has reflected valuation of assets and liabilities qua his wife to be

Rs.22,99,000/- and respondent No. 2 has also reflected the valuation of her assets and liabilities to be Rs.22,99,000/-.

18. So far as mentioning of the bank account number of Hindu undivided family by respondent No.1 and non-mentioning of the same by respondent No.2 is concerned, that also cannot be termed to be any discrepancy as the said column specifically provides for mentioning of the same only in the case of Karta or a coparcener. Evidently, respondent No.2, the wife, can neither be termed to be the Karta nor a coparcener of the joint Hindu family of respondent No.1 i.e. her husband.

    Besides the above alleged discrepancies, no other ground of any concealment or any incorrect statement has been raised by the petitioner. Only a vague averment that certain other facts have been hidden, has been made which, in absence of clear particulars, cannot be considered or adjudicated.

19. In view of the above crystal clear facts and in view of the fact that no discrepancy, whatsoever, could be pointed out by the petitioner in the affidavits as filed by respondents No.1 & 2, this Court is of the clear opinion that there was no ground available with the Returning Officer to reject the nomination paper as filed by respondent No.1, the returned candidate.

20. Further, the order dated 05.12.2023 as passed by the Returning Officer while deciding the objections as raised by the petitioner, makes it clear that no objection, whatsoever, was raised by the petitioner before scrutiny of the nomination papers been made by the Returning Officer. As is reflected from the order dated 05.12.2023, the date fixed for scrutiny of the nomination form was 07.11.2023 whereas the objections were raised by the petitioner on 25.11.2023.

    However, even on merit, the Returning Officer, while considering the requirements as per the provisions of Act of 1951 to the effect that no column of the affidavit as filed by the candidate should be kept blank and further, the same ought to have been signed, notarised and to be on a stamp paper of Rs.50/-, held that all the said conditions had been complied within the affidavits of the candidates. The Returning Officer hence, held the nomination paper to be valid and not to be disqualified in terms of any of the provision of the Act of 1951 or any of the guidelines as issued by the Election Commission.

21. In view of the above facts and observations, this Court is also of the clear opinion that there being no breach of any of the provisions of the Act of 1951 or the guidelines as laid down by the Hon'ble Apex Court in ***Public Interest Foundation's case*** (supra), the nomination form of respondent No.1 could not have been rejected by the Returning Officer.

22. So far as the present petition is concerned, this Court is of the clear opinion that no fact, whatsoever, has been reflected/pleaded which can be termed to be a breach of any of provisions of the Act of 1951 or the guidelines issued by the Hon'ble Apex Court in ***Public Interest Foundation's case*** (supra) so as to constitute a cause of action to lay the present election position.

23. As is the settled position of law, a frivolous litigation ought to be nipped at the bud, and if the Court reaches to a conclusion that no relief, as prayed for, can be granted, the plaint ought to be rejected at the threshold in terms of Order VII Rule 11, CPC. The Hon'ble Apex Court in the case of ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal ; (2017) 13 SCC 174*** held as under:

> "8. The plaint can be rejected Under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power Under Order VII Rule 11, Code of Civil Procedure can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. **If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power Under Order VII Rule 11, Code of Civil Procedure**. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated Under Order VII Rule 11 of Code of Civil Procedure to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the Defendant are wholly immaterial while considering the prayer of the Defendant for rejection of the plaint. **Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power Under Order VII Rule 11 of Code of Civil Procedure can be exercised**. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

24. Further, this Court is of the clear opinion that the present election petition cannot be entertained even on the count that both the reliefs as prayed for by the petitioner cannot be granted to him. As is the settled position of law, in a case where none of the reliefs as sought in the plaint can be granted to the plaintiff in terms of law, such suit should not be allowed to continue and to go for a trial. Such a suit should be thrown out at the threshold. The said view gets it support from the ratio as laid down by the Hon'ble Apex Court in the case of ***Rajendra Bajoria and Ors. Vs. Hemant Kumar Jalan and Ors.; (2022) 12 SCC 641*** wherein the Hon'ble Apex Court affirmed the findings as recorded by the Division Bench of the High Court which read as under:-

"(32) What should the Court do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the Plaintiffs and the Defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the Defendants to go through the ordinarily long drawn process of trial of a suit at huge expense, not to speak of the anxiety and un-peace of mind caused by a litigation hanging over one's head like the Damocles's sword. ***No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint***. The Plaintiffs have not prayed for leave to amend the plaint. ***When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the Plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of action***. The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and the prayers made in a plaint are inextricably intertwined. In the present case, the cause of action pleaded and the reliefs claimed are not recognized by the law of the land. Such a suit should not be kept alive to go to trial"

25. In ***Azhar Hussain vs. Rajiv Gandhi; 1986 Supp 315,*** the Hon'ble Apex Court held that the whole purpose of conferment of powers under the provision of Order 7 Rule 11, CPC is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the Court, in the following words:

"12.... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the Respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

26. Testing on the touchstone of the above ratio as laid down by the Hon'ble Apex Court, so far as the first relief is concerned, an elaborate analysis has already been made in the preceding paras and hence, the same needs no repetition.

So far as prayer No. 2 is concerned, the same also cannot be granted to the petitioner as neither is he the candidate who received a majority of valid votes nor has he pleaded that any vote had been obtained by the returned candidate by corrupt practice and, but for the said vote/votes, the petitioner would have obtained a majority of valid votes. The petitioner therefore, can even otherwise be not declared to be elected in terms of Section 101 of the Act of 1951.

As a necessary corollary, the nomination forms of the other candidates having been accepted and not been rejected by the Returning Officer, would also be of no consequence. Therefore, so far as the present petition is concerned, this Court is not inclined to probe into the issue qua nomination forms of respondents No.3 to 5.

27. In view of the ratio as laid down by the Hon'ble Apex Court and in view of the above analysis and observations, the application under Order VII Rule 11, CPC as preferred on behalf of respondent No.1 is **allowed**. The present election petition as preferred by the petitioner is **rejected** firstly, on the count that it does not disclose any cause of action and secondly, that relief no.2 as prayed for in the present petition also cannot be granted to the petitioner.

(REKHA BORANA),J

914-SP/Vij/-

By order,

ASHWANI KUMAR MOHAL,
SECRETARY,
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर।